

October 31, 2018

VIA ELECTRONIC SUBMISSION AND CERTIFIED MAIL

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Violations of California Labor Code by Amazon

Dear Sir or Madam:

On behalf of our client, Sean M. Hoyt, and pursuant to California Labor Code §§ 2699 and 2699.3, we hereby submit to the California Labor and Workforce Development Agency this notice of violations committed by Mr. Hoyt's former employer Amazon.com, Inc., and Amazon Logistics, Inc. (together, "Amazon"). We intend to file a complaint against Amazon that will include claims under the Private Attorneys General Act of 2004 ("PAGA"). We write to provide notice of the statutory violations described below—which include violations of California Labor Code §§ 201-203, 226, 226.6, 226.7, 510, 512, 1194, and 2802. The claims for civil penalties are based on the following facts:

In early 2018, Mr. Hoyt worked as a delivery driver for Amazon as part of its Amazon Flex program. The Amazon Flex program operates through a software application, where delivery drivers like Mr. Hoyt sign up to complete jobs. Both Amazon.com, Inc., and Amazon Logistics, Inc., are Delaware corporations with their principal place of business in Seattle, Washington. Mr. Hoyt worked for Amazon in the San Francisco Bay Area.

Amazon has a consistent policy of paying its Amazon Flex delivery drivers like Mr. Hoyt by the job, without regard to other payment obligations. Amazon Flex delivery drivers are paid without regard to the amount of time they spend working. This pay structure does not account for overtime owed or meal and rest breaks unaccounted for. Additionally, Amazon does not reimburse delivery drivers for the expenses they incur in performing their work for Amazon—including transportation expenses incurred while making deliveries.

We believe that Amazon has intentionally failed to pay its Amazon Flex delivery drivers for all hours worked in violation of California state law. It has also violated California common and statutory law.

To: California Labor and Workforce Development Agency
Re: Violations of the Cal. Labor Code by Amazon.com, Inc., and Amazon Logistics, Inc.
Date: October 31, 2018
Page: 2 of 4

Throughout the period of time that Mr. Hoyt worked for Amazon, he did not receive the following: 1) overtime pay, 2) missed meal and rest break pay, 3) expense reimbursement, 4) itemized wage statements. These violations are described in further detail below:

Unpaid Overtime

Amazon's compensation system—whereby Amazon pays its delivery drivers a flat job rate—does not account for overtime hours worked. Mr. Hoyt has spent more than 8 hours a day and more than 40 hours in a single week working on deliveries for Amazon. Despite working more than 8 hours a day on certain occasions or more than 40 hours in a week at times, Mr. Hoyt did not receive any premium on his pay. On behalf of his fellow Amazon Flex delivery drivers, Mr. Hoyt seeks unpaid overtime wages for all hours over 8 hours in a day or over 40 hours in a week (and interest). *See* Cal. Labor Code § 510.

Meal and Rest Breaks

Amazon's compensation system also does not allow for meal and rest breaks for its delivery drivers. On some days, Mr. Hoyt would exceed thresholds that would entitle him to meal and rest breaks, but his work schedule did not allow for them. On behalf of his fellow Amazon Flex delivery drivers, Mr. Hoyt seeks compensation for missed meal and rest breaks. *See* Cal. Labor Code. §§ 226.2, 226.7, 512.

Expense Reimbursement

Amazon does not reimburse its delivery drivers for the expenses they incur to perform their jobs. Mr. Hoyt paid for gas and other expenses incurred in the course of making deliveries, but was reimbursed for none of these expenses. Thus, on behalf of his fellow Amazon Flex delivery drivers, Mr. Hoyt seeks reimbursement for such expenses. *See* Cal. Labor Code § 2802.

Waiting Time Penalties

Amazon did not timely pay Mr. Hoyt the wages he is owed, as described above. On behalf of his fellow Amazon Flex delivery drivers who have been terminated from Amazon, Mr. Hoyt seeks waiting time penalties. *See* Cal. Labor Code § 203.

Itemized Wage Statements

Amazon's app-based wage statements do not comport with California Labor Code § 226. On behalf of his fellow Amazon Flex delivery drivers affected by this practice, Mr. Hoyt seeks itemized wage statement penalties.

Illegal Contract Term

California Labor Code § 432.5 provides as follows:

To: California Labor and Workforce Development Agency
Re: Violations of the Cal. Labor Code by Amazon.com, Inc., and Amazon Logistics, Inc.
Date: October 31, 2018
Page: 3 of 4

No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

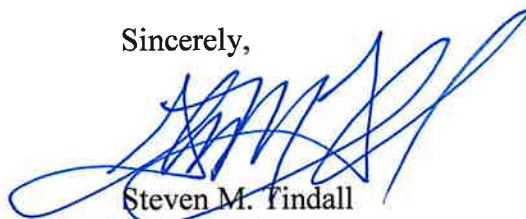
California Civil Code § 1667 further specifies that something “contrary to the policy of express law, though not expressly prohibited” is unlawful. This legal definition, passed by the legislative body, is “binding on the courts.” *People v. W. Air Lines, Inc.* (1954) 42 Cal.2d 621, 638. Moreover, California courts must construe remedial statutes liberally to effectuate their purposes—and PAGA and Labor Code § 432.5 are both remedial in nature. *See Lande v. Jurisich* (1943) 59 Cal.App.2d 613, 616.

In *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, the California Supreme Court found that even if class action waivers in arbitration agreements are enforceable, where “an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.” *Id.* at 384.

Notwithstanding this clear finding by the California Supreme Court, Amazon’s mandatory arbitration policy illegally purports to require an employee to waive his or her right to bring a representative action. This contract term is unlawful under *Iskanian*. Further, the term that Amazon has knowingly, intentionally, and deliberately included in its mandatory arbitration policy in California—*Iskanian* notwithstanding—can and does serve no legitimate legal purpose and actually deters meritorious PAGA representative claims. Amazon’s attempted mandatory waiver of any right to bring PAGA claims as a condition of employment is a PAGA violation in and of itself.

On behalf of other affected Amazon Flex delivery drivers, Mr. Hoyt intends to bring his action under PAGA, as well as California Labor Code §§ 201-203, 226, 226.6, 226.7, 510, 512, 1194, and 2802. In addition to the relief described above, Mr. Hoyt also seeks reasonable attorneys’ fees and costs.

Sincerely,



Steven M. Findall

To: California Labor and Workforce Development Agency
Re: Violations of the Cal. Labor Code by Amazon.com, Inc., and Amazon Logistics, Inc.
Date: October 31, 2018
Page: 4 of 4

cc:

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